

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 16, 2004

SENATE BILL

No. 1568

Introduced by Senator Sher

February 19, 2004

An act to amend Sections 66633, 66637, 66638, 66639, 66640, and 66641.5 of, and to add Section 66612 to, the Government Code, relating to the San Francisco Bay Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1568, as amended, Sher. San Francisco Bay Conservation and Development Commission.

(1) Existing law establishes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission.

This bill would authorize the commission to make grants.

This bill would require a person who is acting as an agent for a transferor of an interest in real property that is located within the commission's jurisdiction, or the transferor, if he or she is acting without an agent, to disclose to a prospective transferee, if he or she has actual knowledge, the fact that the property is located within that jurisdiction, as specified.

(2) Existing law requires a person or governmental agency to secure a permit from the commission if the person or agency wishes to place fill in, to extract materials from, or to make any substantial change in use of, any water, land, or structure within the area of the commission's jurisdiction.

Existing law authorizes the commission, and its executive director, to issue cease and desist orders in connection with activities that may

require a permit or may be inconsistent with a permit, as specified. Existing law requires copies of the cease and desist order to be mailed to specified persons and agencies.

This bill would also require a copy of the cease and desist order to be sent by certified mail to the owner of the property on which the violation occurred.

(3) Existing law authorizes an aggrieved person to file with the superior court a petition for writ of mandate for review of a cease and desist order of the commission or its executive director, within 30 days after service of a copy of the order. Failure to file the specified action does not preclude a party from challenging the order in any judicial proceeding brought to enforce the order or for other civil remedies.

This bill, instead, would require the person to file the specified action within ~~30~~ 90 days after service of the order, and would provide that failure to file the action precludes the party from challenging the order in all circumstances. The bill would provide that the ~~30~~ 90 days may be extended by written agreement signed by both the executive director and an aggrieved party.

(4) Existing law requires the Attorney General, upon request of the commission, to petition the superior court for an injunction, as specified, if a person fails to comply with a cease and desist order issued by the commission.

This bill would also require the Attorney General, upon request of the commission, to petition the superior court for an injunction, if a person fails to comply with a permit, a cease and desist order issued by the executive director, or other specified requirements.

(5) Existing law imposes civil penalties in specified amounts for violations of provisions relating to San Francisco Bay conservation and development.

This bill would increase the amounts for those penalties and would impose civil penalties for negligent violations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66612 is added to the Government
2 Code, to read:
3 66612. (a) A person who is acting as an agent for a transferor
4 of an interest in real property that is located within the



1 commission's jurisdiction, or the transferor, if he or she is acting
2 without an agent, shall disclose to a prospective transferee the fact
3 that the property is located within the commission's jurisdiction,
4 if the transferor, or the transferor's agent, has actual knowledge
5 that the property is within the commission's jurisdiction.

6 (b) This section applies to a transfer of any property interest,
7 including, but not limited to, transfer of a title, a lease, an option
8 to buy, or a license.

9 (c) The disclosure required under this section shall occur as
10 soon as practicable before or upon the execution of a contract to
11 transfer the property interest or, if no contract is executed, before
12 the transfer of the interest.

13 (d) Section 1103.13 of the Civil Code applies to the disclosure
14 required under this section.

15 (e) The requirement in this section for disclosure does not limit
16 or abridge any obligation for disclosure created by any other law
17 or that may exist in order to avoid fraud, misrepresentation, or
18 deceit in the transfer transaction.

19 SEC. 2. Section 66633 of the Government Code is amended
20 to read:

21 66633. The commission may:

22 (a) Accept grants, contributions, and appropriations from a
23 public agency, private foundation, or individual.

24 (b) Appoint committees from its membership and appoint
25 advisory committees from other interested public and private
26 groups.

27 (c) Contract for or employ any professional services required
28 by the commission or for the performance of work and services
29 that in its opinion cannot satisfactorily be performed by its officers
30 and employees or by other federal, state, or local governmental
31 agencies.

32 (d) Sue and be sued in all actions and proceedings and in all
33 courts and tribunals of competent jurisdiction, including
34 prohibitory and mandatory injunctions to restrain violations of this
35 title.

36 (e) Make grants and do any and all other things necessary to
37 carry out the purposes of this title.

38 SEC. 3. Section 66637 of the Government Code is amended
39 to read:

1 66637. (a) When the executive director determines that a
2 person or governmental agency has undertaken, or is threatening
3 to undertake, an activity that (1) may require a permit from the
4 commission without securing a permit; or (2) may be inconsistent
5 with a permit previously issued by the commission, the executive
6 director may issue an order directing that person or governmental
7 agency to cease and desist.

8 (b) A cease and desist order issued by the executive director
9 may be subject to the terms and conditions that the executive
10 director may determine are necessary to ensure compliance with
11 this title, including the immediate removal of any fill or other
12 material where that removal is necessary to avoid irreparable
13 injury to an area within the jurisdiction of the commission pending
14 action by the commission under Section 66638.

15 (c) A cease and desist order issued by the executive director
16 shall become null and void 90 days after issuance.

17 (d) A cease and desist order issued by the executive director
18 shall be effective upon the issuance thereof, and copies shall be
19 served forthwith by certified mail upon the person or
20 governmental agency being charged with the actual or threatened
21 violation of this title. A copy of the cease and desist order shall also
22 be sent by certified mail to the owner of the property on which the
23 violation occurred.

24 SEC. 4. Section 66638 of the Government Code is amended
25 to read:

26 66638. (a) When the commission, after public hearing,
27 determines that a person or governmental agency has undertaken,
28 or is threatening to undertake, an activity that (1) requires a permit
29 from the commission without securing a permit, or (2) is
30 inconsistent with a permit previously issued by the commission,
31 the commission may issue an order requiring the person or
32 governmental agency to cease and desist.

33 (b) A cease and desist order issued by the commission may be
34 subject to the terms and conditions that the commission may
35 determine are necessary to insure compliance with this title,
36 including immediate removal of any fill or other material or the
37 setting of a schedule within which steps must be taken to obtain a
38 permit pursuant to this title.

39 (c) Notice of the public hearing on a proposed cease and desist
40 order shall be given to all affected persons and agencies and the

1 order shall be effective and final as to the commission upon
2 issuance thereof. Copies shall be served forthwith by certified mail
3 upon the person or governmental agency being charged with the
4 actual or threatened violation of this title and upon other affected
5 persons and agencies who appeared at the hearing and requested
6 a copy. A copy of the cease and desist order shall also be sent by
7 certified mail to the owner of the property on which the violation
8 occurred.

9 SEC. 5. Section 66639 of the Government Code is amended
10 to read:

11 66639. (a) Within ~~30~~ 90 days after service of a copy of a cease
12 and desist order issued by the executive director under Section
13 66637, an aggrieved party may challenge the order by filing with
14 the superior court a petition for writ of mandate for review thereof
15 pursuant to Section 1094.5 of the Code of Civil Procedure. An
16 aggrieved party who does not file that action may not challenge the
17 reasonableness and validity of the order of the executive director
18 in all circumstances, including, but not limited to, any judicial
19 proceeding brought to enforce the order or for other civil remedies.

20 (b) The evidence before the court in a proceeding to review an
21 order issued by the executive director as described in subdivision
22 (a) shall consist of the record that the executive director
23 considered, and in cases where it is claimed that the findings are
24 not supported by the evidence, abuse of discretion is established
25 only if the court determines that the findings are not supported by
26 substantial evidence in the light of the whole record.

27 (c) Within ~~30~~ 90 days after service of a copy of a cease and
28 desist order issued by the commission under Section 66638, an
29 aggrieved party may challenge the order by filing with the superior
30 court a petition for writ of mandate for review thereof, pursuant to
31 Section 1094.5 of the Code of Civil Procedure. An aggrieved party
32 who does not file that action may not challenge the reasonableness
33 and validity of the order of the commission in all circumstances,
34 including, but not limited to, any judicial proceeding brought to
35 enforce the order or for other civil remedies.

36 (d) The evidence before the court in a proceeding to review an
37 order of the commission described in subdivision (c) shall consist
38 of the record before the commission, and in cases where it is
39 claimed that the findings are not supported by the evidence, abuse
40 of discretion is established only if the court determines that the

1 findings are not supported by substantial evidence in the light of
2 the whole record.

3 (e) The ~~30~~ 90 days within which an aggrieved party may file a
4 challenge to an order, pursuant to subdivisions (a) and (c), may be
5 extended by written agreement signed by both the executive
6 director and an aggrieved party.

7 SEC. 6. Section 66640 of the Government Code is amended
8 to read:

9 66640. (a) Upon the failure of a person to comply with a
10 permit, a cease and desist order issued by the executive director or
11 the commission, or with any provision of this title, the Attorney
12 General, upon request of the commission, shall petition the
13 superior court for the issuance of a preliminary or permanent
14 injunction, or both, as may be appropriate, restraining the person
15 or persons from continuing any activity in violation of the permit,
16 order, or provision of this title.

17 (b) The evidence before the court shall consist of the record
18 before the executive director or the commission, and any other
19 relevant evidence that, in the judgment of the court, should be
20 considered to effectuate and implement the policies of this title. In
21 every case brought under this section, the court shall exercise its
22 independent judgment on the evidence.

23 (c) The court shall issue an order directing defendants to appear
24 before the court at a time and place certain and show cause why the
25 injunction should not be issued. The court may grant any
26 prohibitory or mandatory relief that may be warranted.

27 (d) The court may stay the operation of the cease and desist
28 order after notice to the executive director or the commission,
29 whichever initially issued the order, and hearing. The stay may be
30 imposed or continued only if it is not against the public interest.

31 SEC. 7. Section 66641.5 of the Government Code is amended
32 to read:

33 66641.5. (a) In addition to any other penalties, any person or
34 entity who violates this title is subject to a civil penalty of not to
35 exceed thirty thousand dollars (\$30,000). In determining the
36 amount of a civil penalty, the court shall consider the factors listed
37 in subdivision (a) of Section 66641.9.

38 (b) In addition to any other penalties, any person or entity who
39 intentionally and knowingly undertakes any activity requiring a
40 permit pursuant to subdivision (a) of Section 66632 without that



1 permit, or who intentionally and knowingly violates any term or
2 condition of any permit issued by or on behalf of the commission,
3 is subject to a civil penalty of not less than one hundred dollars
4 (\$100), nor more than ten thousand dollars (\$10,000), per day for
5 each day in which that violation occurs or persists.

6 (c) Except as provided in Section 818, whenever a person or
7 entity has intentionally and knowingly violated this title or any
8 term or condition of a permit issued by or on behalf of the
9 commission, the commission may maintain an action, in addition
10 to the actions authorized pursuant to subdivisions (a) and (b), for
11 the recovery of exemplary damages. In determining the amount to
12 be awarded, the court shall consider the amount of damages
13 necessary to deter further violations.

14 (d) In addition to any other penalties, a person or entity who
15 negligently undertakes an activity requiring a permit pursuant to
16 subdivision (a) of Section 66632 without that permit, or who
17 negligently violates any term or condition of any permit issued by
18 or on behalf of the commission, is subject to a civil penalty of not
19 less than fifty dollars (\$50) nor more than five thousand dollars
20 (\$5,000) per day for each day in which that violation occurs or
21 persists.

22 (e) Civil liability may be administratively imposed by the
23 commission in accordance with Section 66641.6 on any person or
24 entity for any violation of this title or any term or condition of a
25 permit issued by or on behalf of the commission in an amount that
26 shall be not less than ten dollars (\$10), nor more than two thousand
27 dollars (\$2,000), for each day in which that violation occurs or
28 persists, but the commission may not administratively impose a
29 fine of more than thirty thousand dollars (\$30,000) for a single
30 violation.

31 (f) Any moneys recovered by the commission pursuant to this
32 section shall be deposited in the fund established and administered
33 pursuant to Section 66647.